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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BRUCE WESTIN,

Defendant and Appellant.

B240245

(Los Angeles County
Super. Ct. No. SA061160)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James R. Dabney, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Appellant Bruce Westin appeals from the trial court's order modifying his probation by ordering him to pay \$20 a month in restitution. We affirm.

As we have summarized in prior opinions in this case (B209234, B204594, B202964, B204594), a jury convicted appellant of committing vandalism causing damage over \$400 (Pen. Code, § 594, subd. (a).) The evidence at trial established that appellant was involved in an ownership dispute regarding a duplex in which he was living. Frederick Nitowski, the owner, began proceedings to evict appellant. During these proceedings, appellant threatened that the apartment was not going to be worth anything when he was done. After obtaining an eviction order from the court, Nitowski discovered that appellant had severely damaged a unit.

At the time of trial, the damage to the premises was determined to be \$71,329. The trial court suspended imposition of sentence and placed appellant on formal probation for five years under certain terms and conditions, including that he make restitution. The judgment was affirmed on appeal in B202964.

At a later restitution hearing, the court ordered appellant to reimburse the victim in the amount of \$ 94,547.48. That order was affirmed in B204594.

A financial evaluator determined that appellant had the ability to pay \$50 a month in restitution. In the proceeding from which the latest appeal arises, the probation department reported that rather than paying \$50 a month, defendant was paying between fifty cents and a dollar. The court modified defendant's probation to order that he pay \$20 a month. Defendant filed a notice of appeal from the order modifying his probation.

After review of the record, appellant's court-appointed counsel filed an opening brief asking this court to review the record independently pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441. Appellant filed a supplemental brief in which he contends that he cannot pay \$20 a month and that the court's order was

arbitrary. We disagree. The record of the hearing shows that appellant receives \$938 a month from S.S.I. and pays no rent. The financial evaluator concluded that he could afford to pay \$50 a month. The trial court offered appellant the opportunity to be interviewed by the financial evaluator again if his situation had changed or a full hearing on his ability to pay. Defendant represented that his situation had not changed. Defendant contended that his cost of food and clothing did not permit him to contribute any more than a dollar to restitution. The court informed him that if that was his contention, he needed to present receipts to substantiate it. Appellant said that he had no bills because he paid for everything in cash. Despite the financial evaluator's conclusion that appellant could pay \$50 a month, the court ordered him to pay only \$20 a month. As the court stated: "[Y]ou're not paying rent, so I don't see why out of [\$]938 that you can't pay \$20 when you have a restitution obligation that you'll never pay off." The court's reasoning was sound and was certainly not an abuse of discretion.

We have examined the entire record and are satisfied that no arguable issues exist, and that appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.